



Reprinted
February 20, 2009

SENATE BILL No. 493

DIGEST OF SB 493 (Updated February 19, 2009 7:12 pm - DI 106)

Citations Affected: IC 4-21.5; IC 33-23; IC 35-47; noncode.

Synopsis: Handgun license revocation procedures. Establishes a two-track procedure for the revocation or suspension of handgun licenses. Provides that, under the revocation track, the superintendent of the state police department may immediately suspend or revoke a person's handgun license based on: (1) the commission of certain crimes; (2) the fact that the person's license is already suspended; or (3) the person's age if the person is underage; if the superintendent has documented evidence demonstrating these facts by clear and convincing evidence. Authorizes a de novo review of the superintendent's determination, and provides that the superintendent has the burden of establishing the person's ineligibility by clear and convincing evidence. Specifies that if a person is charged with a felony, the person may petition the court to order the superintendent to reinstate the person's license if the person has been acquitted of all charges that would prohibit the person from possessing a license. Provides that the prosecuting attorney bears the burden of proving the person's ineligibility by clear and convincing evidence. Provides that, under the suspension track, the superintendent may conditionally suspend the handgun license of certain persons for a 90 day period (or longer if the person requests a continuance) if: (1) the superintendent has documented evidence demonstrating by clear and convincing evidence that the person has a propensity for violent or
(Continued next page)

Effective: July 1, 2009.

Waltz, Delph, Arnold

January 15, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 12, 2009, amended, reported favorably — Do Pass.

February 19, 2009, read second time, amended, ordered engrossed.

SB 493—LS 7098/DI 106+



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emotionally unstable conduct; or (2) the superintendent has clear and convincing evidence that the person's license should be suspended. Requires that the evidence relied upon by the superintendent be based written medical evidence. Provides that a person whose license has been suspended may seek de novo review of the superintendent's suspension by filing a petition and an waiver of medical privacy concerning matters that bear on the person's eligibility to possess a license. Requires the prosecuting attorney to establish the person's ineligibility to possess a license by clear and convincing evidence. Provides that a person who knowingly or intentionally fails to return a license promptly after written notice of suspension or revocation commits a Class A misdemeanor. Makes other changes and conforming amendments. Repeals a superseded provision.

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Reprinted
February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 493

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-21.5-5-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Except as**
3 **provided in IC 35-47-2-25(c)**, the burden of demonstrating the
4 invalidity of agency action is on the party to the judicial review
5 proceeding asserting invalidity.
6 (b) The validity of agency action shall be determined in accordance
7 with the standards of review provided in this section, as applied to the
8 agency action at the time it was taken.
9 (c) The court shall make findings of fact on each material issue on
10 which the court's decision is based.
11 (d) The court shall grant relief under section 15 of this chapter only
12 if it determines that a person seeking judicial relief has been prejudiced
13 by an agency action that is:
14 (1) arbitrary, capricious, an abuse of discretion, or otherwise not
15 in accordance with law;

SB 493—LS 7098/DI 106+



- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

SECTION 2. IC 33-23-1-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.5. "NICS" has the meaning set forth in IC 35-47-2.5-2.5.**

SECTION 3. IC 33-23-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 15. NICS Appeals

Sec. 1. This chapter applies to the following:

- (1) A person civilly committed under IC 12-26-6-8.
- (2) A person found to be mentally ill and either dangerous or gravely disabled under IC 12-26-7-5.
- (3) A person found guilty but mentally ill under IC 35-36-2-5.
- (4) A person found not responsible by reason of insanity under IC 35-36-2-4.
- (5) A person found incompetent to stand trial under IC 35-36-3-1.
- (6) A person found to be a drug abuser or an alcoholic under IC 12-23-8.
- (7) A person receiving treatment or rehabilitation services under IC 12-23-14.
- (8) A person receiving treatment or rehabilitation services from a drug court under IC 12-23-14.5.
- (9) A confined offender who is determined to be mentally ill by a psychiatrist employed or retained by the department of correction under IC 11-10-4.

Sec. 2. (a) If a person described in section 1 of this chapter:

- (1) has been released from commitment; or
- (2) successfully completes a treatment or rehabilitation program;

the person may petition the court (if the adjudication leading to the person's commitment, rehabilitation, or treatment program was from a court) or the department of correction (if the determination leading to the person's rehabilitation or treatment program was from a psychiatrist employed by or retained by the department of correction) to determine whether the person is prohibited from possessing a handgun because the person is not a proper person

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under IC 35-47-1-7(5) or IC 35-47-1-7(6).

(b) In determining whether the person is prohibited from possessing a handgun because the person is not a proper person under IC 35-47-1-7(5) or IC 35-47-1-7(6), the court or department of correction shall consider the following evidence:

(1) The facts and circumstances leading to the person being included in the category of persons to whom this chapter applies.

(2) The person's mental health and criminal history records.

(3) Evidence concerning the person's reputation, including the testimony of character witnesses.

(4) A recent mental health evaluation.

(c) If the court or the department of correction, after considering the evidence described in subsection (b), finds by clear and convincing evidence that:

(1) the person is not a danger to the person or to others;

(2) the person is not likely to act in a manner dangerous to public safety; and

(3) the requested relief would not be contrary to public interest;

the court or department of correction shall transmit a copy of its findings to the department of state court administration, and any other information required by the division of state court administration, for transmission to NICS in accordance with IC 33-24-6-3.

(d) A determination under this section may be appealed only in accordance with section 3 of this chapter.

Sec. 3. (a) A person who receives an adverse decision under section 2 of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for review:

(1) in the court of conviction, if the adverse decision was made by the department of correction; or

(2) in a circuit or superior court in a county adjacent to the county in which the court rendered the adverse decision, if the adverse decision was made by a court.

(b) The court hearing an action for review filed under this section shall conduct the review hearing de novo. The hearing shall be conducted in accordance with section 2 of this chapter.

(c) The determination of a court under this section is a final appealable order.

SECTION 4. IC 35-47-2-23 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) A person who violates section 3, 4, ~~5~~, 14, 15, or 16 of this chapter commits a Class B misdemeanor.

(b) A person who violates section 7, 17, or 18 of this chapter commits a Class C felony.

(c) A person who violates section 1 of this chapter commits a Class A misdemeanor. However, the offense is a Class C felony:

(1) if the offense is committed:

(A) on or in school property;

(B) within one thousand (1,000) feet of school property; or

(C) on a school bus; or

(2) if the person:

(A) has a prior conviction of any offense under:

(i) this subsection; or

(ii) subsection (d); or

(B) has been convicted of a felony within fifteen (15) years before the date of the offense.

(d) A person who violates section 22 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of any offense under this subsection or subsection (c), or if the person has been convicted of a felony within fifteen (15) years before the date of the offense.

SECTION 5. IC 35-47-2-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25. (a) The superintendent immediately may suspend or revoke a license issued under this chapter if the superintendent has documented evidence demonstrating by clear and convincing evidence that a person is prohibited under section 3(g)(5) of this chapter from being issued a license or is not a proper person to be licensed under:**

(1) IC 35-47-1-7(1) (conviction for resisting law enforcement);

(2) IC 35-47-1-7(2) (conviction for a felony);

(3) IC 35-47-1-7(3) (conviction for a crime of domestic violence);

(4) IC 35-47-1-7(4) (prohibited by court order);

(5) IC 35-47-1-7(5) (alcohol or drug abuser);

(6) IC 35-47-1-7(7) (false statement of material fact on handgun application);

(7) IC 35-47-1-7(8) (conviction related to unsafe use of a handgun);

(8) IC 35-47-1-7(9) (conviction related to violation of this article); or

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(9) IC 35-47-1-7(10) (certain juvenile adjudications).

(b) If a license is suspended or revoked based solely on an arrest under section 3(g)(5) of this chapter, the license shall be reinstated upon the acquittal of the defendant in that case or upon the dismissal of the charges for the specific offense. If a person's license is suspended because the person has been charged with a felony, the person may seek reinstatement of the license in accordance with subsection (k).

(c) A person whose license is suspended or revoked under subsection (a) may file a petition for de novo review of the suspension or revocation in accordance with subsection (d). A court may stay the suspension or revocation of a license pending de novo review.

(d) A person who receives an adverse decision under subsection (a) of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for de novo review in the court of conviction. The sentencing court hearing an action for review filed under this section shall conduct the review hearing de novo. If the court finds that the superintendent has demonstrated by clear and convincing evidence that there is documented evidence showing that the person is prohibited under section 3(g)(5) of this chapter from being issued a license or is not a proper person to be licensed under:

- (1) IC 35-47-1-7(1) (conviction for resisting law enforcement);
- (2) IC 35-47-1-7(2) (conviction for a felony);
- (3) IC 35-47-1-7(3) (conviction for a crime of domestic violence);
- (4) IC 35-47-1-7(4) (prohibited by court order);
- (5) IC 35-47-1-7(5) (alcohol or drug abuser);
- (6) IC 35-47-1-7(7) (false statement of material fact on handgun application);
- (7) IC 35-47-1-7(8) (conviction related to unsafe use of a handgun);
- (8) IC 35-47-1-7(9) (conviction related to violation of this article); or
- (9) IC 35-47-1-7(10) (certain juvenile adjudications);

the court shall affirm the superintendent's suspension or revocation of the person's license. If the superintendent fails to meet the burden of proof, the court shall order the superintendent to reinstate the person's license. The determination of a court under this subsection is a final appealable order.

(e) At least three hundred sixty-five (365) days after the date the

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1 decision revoking or suspending the person's license under
 2 subsection (a) becomes final, the person may petition the
 3 sentencing court to order the superintendent to reinstate the
 4 person's license. Upon receipt of a petition filed under this
 5 subsection, the court shall:

- 6 (1) enter an order setting a hearing date; and
- 7 (2) inform the attorney general and the superintendent of the
 8 date, time, and location of the hearing.

9 (f) In a hearing under subsection (e), the superintendent must
 10 prove by clear and convincing evidence that the person is:

11 (1) prohibited under section 3(g)(5) of this chapter from being
 12 issued a license; or

13 (2) not a proper person to be licensed under:

14 (A) IC 35-47-1-7(1) (conviction for resisting law
 15 enforcement);

16 (B) IC 35-47-1-7(2) (felony conviction);

17 (C) IC 35-47-1-7(3) (conviction for a crime of domestic
 18 violence);

19 (D) IC 35-47-1-7(4) (prohibited by court order);

20 (E) IC 35-47-1-7(5) (alcohol or drug abuser);

21 (F) IC 35-47-1-7(7) (false statement of material fact);

22 (G) IC 35-47-1-7(8) (conviction related to unsafe use of a
 23 handgun);

24 (H) IC 35-47-1-7(9) (conviction related to violation of this
 25 article); or

26 (I) IC 35-47-1-7(10) (certain juvenile adjudications).

27 (g) If, upon the completion of a hearing under subsection (e) and
 28 a consideration of the record, the court finds that the person is:

29 (1) not prohibited under section 3(g)(5) of this chapter from
 30 being issued a license; and

31 (2) a proper person to be licensed under:

32 (A) IC 35-47-1-7(1) (conviction for resisting law
 33 enforcement);

34 (B) IC 35-47-1-7(2) (felony conviction);

35 (C) IC 35-47-1-7(3) (conviction for a crime of domestic
 36 violence);

37 (D) IC 35-47-1-7(4) (prohibited by court order);

38 (E) IC 35-47-1-7(5) (alcohol or drug abuser);

39 (F) IC 35-47-1-7(7) (false statement of material fact);

40 (G) IC 35-47-1-7(8) (conviction related to unsafe use of a
 41 handgun);

42 (H) IC 35-47-1-7(9) (conviction related to violation of this

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article); or

(I) IC 35-47-1-7(10) (certain juvenile adjudications);

the court shall order the superintendent to reinstate the person's license.

(h) If the court denies a person's petition under subsection (e), the person may not file a subsequent petition until at least three hundred sixty-five (365) days after the date the court denied the petition.

(i) A person who knowingly or intentionally fails to return a license promptly after written notice of suspension or revocation commits a Class A misdemeanor. The observation of a handgun license in the possession of a person whose license has been suspended or revoked constitutes a sufficient basis for the arrest of that person for violation of this subsection.

(j) The superintendent shall establish rules under IC 4-22-2 concerning the procedure for suspending or revoking a person's license under this section.

(k) This subsection applies only to a person whose license has been suspended because the person has been charged with a felony. If the person is acquitted of:

(1) all felonies; and

(2) all misdemeanors that would disqualify the person from possessing a license;

the person may petition the court in which the trial was held to order the superintendent to reinstate the person's license. The court shall schedule a hearing and notify the prosecuting attorney. In a hearing conducted under this subsection, the prosecuting attorney must prove by clear and convincing evidence that the person is not entitled to possess a license. The court shall order the superintendent to reinstate the person's license unless the court finds that the prosecuting attorney has proved by clear and convincing evidence that the person is not entitled to possess a license.

SECTION 6. IC 35-47-2-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) This section does not apply to a person described in IC 33-23-15.

(b) The superintendent may conditionally suspend the license of a person for not more than ninety (90) days if the superintendent:

(1) has documented evidence that demonstrates by clear and convincing evidence that the person has a propensity for violent or emotionally unstable conduct; or

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(2) has clear and convincing evidence that the person's license should be suspended or revoked; in accordance with this section. The superintendent may suspend the license of a person charged with a felony in accordance with subsection (s).

(b) The superintendent may suspend a license under this section only if the evidence relied upon by the superintendent is written medical evidence.

(d) This subsection does not apply to a person who has been charged with a felony. A person whose license has been suspended under subsection (b) may seek reinstatement of the license by filing a request for reinstatement with a circuit or superior court in the person's county of residence not later than thirty (30) days after the person's license has been suspended. The person must attach a signed waiver of medical privacy concerning all matters that bear on the person's eligibility to possess a license. The court shall forward a copy of the request for reinstatement and waiver of medical privacy to the county prosecuting attorney. If the person has filed a request for reinstatement and waiver of medical privacy with the court, upon the expiration of the suspension period described in subsection (b), a license suspended under this section shall be automatically reinstated unless, before the expiration of the suspension period:

(1) the prosecuting attorney of the county where the person whose license has been suspended resides:

(A) upon request of the chief of police or corresponding law enforcement officer of the municipality in which the person whose license was suspended resides;

(B) upon request of the county sheriff of the county in which the person whose license was suspended resides; or

(C) without having received a request from a person described in clause (A) or (B);

petitions a circuit or superior court in the person's county of residence to suspend or revoke the license; and

(2) the court, following a hearing held in accordance with this section, authorizes the superintendent to suspend or revoke the license.

However, if the person whose license has been suspended requests and receives a continuance in a proceeding described under this subsection, the person's license will remain suspended until the conclusion of the proceeding, at which point the person's license will be reinstated, suspended, or revoked in accordance with the

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1 court's determination under subdivision (2). If a person does not
 2 file a request for reinstatement and waiver of medical privacy, the
 3 person's license will be suspended indefinitely. However, a person
 4 whose license has been indefinitely suspended based on the
 5 person's failure to seek reinstatement under this subsection may,
 6 not earlier than three hundred sixty-five (365) days after the
 7 person's license was suspended, file a petition for reinstatement
 8 with the court in accordance with subsection (m).

9 (e) The prosecuting attorney may commence a proceeding to
 10 authorize the superintendent to suspend or revoke a license by
 11 filing a written petition with the court alleging that:

12 (1) the person has a propensity for violent or emotionally
 13 unstable conduct; or

14 (2) other reasonable grounds exist to suspend or revoke the
 15 person's license.

16 (f) The petition described in subsection (e) must contain a
 17 statement by a physician that, based on:

18 (1) an examination; or

19 (2) information given to the physician;

20 the person may have a propensity for violent or emotionally
 21 unstable conduct, or other reasonable grounds exist to suspend or
 22 revoke the person's license.

23 (g) Not later than three (3) days after the prosecuting attorney
 24 files a petition under subsection (e), the court shall:

25 (1) enter an order setting a hearing date; and

26 (2) inform the:

27 (A) prosecuting attorney;

28 (B) superintendent; and

29 (C) person whose license was suspended;

30 of the date, time, and location of the hearing.

31 (h) The hearing date set under subsection (g) must be at least
 32 two (2) days after the court's order and, if practicable, less than
 33 forty-five (45) days from the date on which the person's license was
 34 suspended.

35 (i) The court may appoint a physician to do the following:

36 (1) Examine the person.

37 (2) Report, before the hearing, the physician's opinion as to
 38 whether the person may have a propensity for violent or
 39 emotionally unstable conduct, or other reasonable grounds
 40 exist to suspend or revoke the person's license.

41 (j) If a report made under subsection (i) is that:

42 (1) the person does not have a propensity for violent or

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emotionally unstable conduct; and

(2) no other reasonable grounds exist to suspend or revoke the person's license;

the court may terminate the proceedings and order the superintendent to reinstate the person's license. Otherwise, the hearing must proceed as scheduled by the court.

(k) If, upon completion of the hearing and consideration of the record, the court finds that the prosecuting attorney has proved by clear and convincing evidence that the person has a propensity for violent or emotionally unstable conduct, or other reasonable grounds exist to suspend or revoke the person's license, the court shall authorize the superintendent to suspend or revoke the person's license. If the court finds that the person does not have a propensity for violent or emotionally unstable conduct, and that no other reasonable grounds exist to suspend or revoke the person's license, the court shall order the superintendent to reinstate the person's license. A determination under this subsection is a final appealable order.

(l) A determination under subsection (k) that the person has a propensity for violent or emotionally unstable conduct, or that other reasonable grounds exist to suspend or revoke the person's license, must be based on evidence that is written medical evidence.

(m) At least three hundred sixty-five (365) days after:

(1) a decision under subsection (k) becomes final; or

(2) the person's license is suspended, if the person does not file a petition for reinstatement under subsection (d);

the person may petition the court to order the superintendent to reinstate the person's license. The person must attach to the petition a signed waiver of medical privacy concerning all matters that bear on the person's eligibility to possess a license. Upon receipt of a petition and waiver of medical privacy filed under this subsection, the court shall enter an order setting a hearing date and inform the prosecuting attorney and the superintendent of the date, time, and location of the hearing.

(n) In a hearing under subsection (m), the prosecuting attorney must prove by clear and convincing evidence that:

(1) the person has a propensity for violent or emotionally unstable conduct; or

(2) other reasonable grounds exist to continue the suspension or revocation of the person's license.

(o) If, upon the completion of a hearing under subsection (m) and a consideration of the record, the court finds that:

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1 (1) the person does not have a propensity for violent or
2 emotionally unstable conduct; and

3 (2) no other reasonable grounds exist to continue the
4 suspension or revocation of the person's license;

5 the court shall order the superintendent to reinstate the person's
6 license.

7 (p) The granting or denial of a petition under subsection (m) is
8 a final appealable order. If the court denies a person's petition
9 under subsection (m), the person may not file a subsequent petition
10 except in accordance with the periods established in subsection (m).

11 (q) A person who knowingly or intentionally fails to return a
12 license promptly after written notice of suspension or revocation
13 commits a Class A misdemeanor. The observation of a handgun
14 license in the possession of a person whose license has been
15 suspended or revoked constitutes a sufficient basis for the arrest of
16 that person for violation of this subsection.

17 (r) The superintendent shall establish rules under IC 4-22-2
18 concerning the procedure for suspending or revoking a person's
19 license under this section.

20 (s) This subsection applies only to a person who has been
21 charged with a felony. The superintendent may suspend the license
22 of a person charged with a felony until the criminal case against
23 the person is resolved. If the person is acquitted of:

24 (1) all felonies; and

25 (2) all misdemeanors that would disqualify the person from
26 possessing a license;

27 the person may petition the court in which the trial was held to
28 order the superintendent to reinstate the person's license. The
29 court shall schedule a hearing and notify the prosecuting attorney.
30 In a hearing conducted under this subsection, the prosecuting
31 attorney must prove by clear and convincing evidence that the
32 person is not entitled to possess a license. The court shall order the
33 superintendent to reinstate the person's license unless the court
34 finds that the prosecuting attorney has proved by clear and
35 convincing evidence that the person is not entitled to possess a
36 license.

37 SECTION 7. IC 35-47-2-5 IS REPEALED [EFFECTIVE JULY 1,
38 2009].

39 SECTION 8. [EFFECTIVE JULY 1, 2009] IC 35-47-2-25 and
40 IC 35-47-2-26, both as added by this act, apply only to crimes
41 committed after June 30, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 493, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 38, delete "forty-five (45)" and insert "**ninety (90)**".

Page 5, between lines 27 and 28, begin a new line blocked left and insert:

"However, if the person whose license has been suspended requests and receives a continuance in a proceeding described under this subsection, the person's license will remain suspended until the conclusion of the proceeding, at which point the person's license will be reinstated, suspended, or revoked in accordance with the court's determination under subdivision (2)."

and when so amended that said bill do pass.

(Reference is to SB 493 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 4.

SENATE MOTION

Madam President: I move that Senate Bill 493 be amended to read as follows:

Page 2, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 33-23-1-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9.5. "NICS" has the meaning set forth in IC 35-47-2.5-2.5.

SECTION 3. IC 33-23-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 15. NICS Appeals

Sec. 1. This chapter applies to the following:

- (1) A person civilly committed under IC 12-26-6-8.**
- (2) A person found to be mentally ill and either dangerous or gravely disabled under IC 12-26-7-5.**
- (3) A person found guilty but mentally ill under IC 35-36-2-5.**

SB 493—LS 7098/DI 106+



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(4) A person found not responsible by reason of insanity under IC 35-36-2-4.

(5) A person found incompetent to stand trial under IC 35-36-3-1.

(6) A person found to be a drug abuser or an alcoholic under IC 12-23-8.

(7) A person receiving treatment or rehabilitation services under IC 12-23-14.

(8) A person receiving treatment or rehabilitation services from a drug court under IC 12-23-14.5.

(9) A confined offender who is determined to be mentally ill by a psychiatrist employed or retained by the department of correction under IC 11-10-4.

Sec. 2. (a) If a person described in section 1 of this chapter:

(1) has been released from commitment; or

(2) successfully completes a treatment or rehabilitation program;

the person may petition the court (if the adjudication leading to the person's commitment, rehabilitation, or treatment program was from a court) or the department of correction (if the determination leading to the person's rehabilitation or treatment program was from a psychiatrist employed by or retained by the department of correction) to determine whether the person is prohibited from possessing a handgun because the person is not a proper person under IC 35-47-1-7(5) or IC 35-47-1-7(6).

(b) In determining whether the person is prohibited from possessing a handgun because the person is not a proper person under IC 35-47-1-7(5) or IC 35-47-1-7(6), the court or department of correction shall consider the following evidence:

(1) The facts and circumstances leading to the person being included in the category of persons to whom this chapter applies.

(2) The person's mental health and criminal history records.

(3) Evidence concerning the person's reputation, including the testimony of character witnesses.

(4) A recent mental health evaluation.

(c) If the court or the department of correction, after considering the evidence described in subsection (b), finds by clear and convincing evidence that:

(1) the person is not a danger to the person or to others;

(2) the person is not likely to act in a manner dangerous to public safety; and

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(3) the requested relief would not be contrary to public interest;

the court or department of correction shall transmit a copy of its findings to the department of state court administration, and any other information required by the division of state court administration, for transmission to NICS in accordance with IC 33-24-6-3.

(d) A determination under this section may be appealed only in accordance with section 3 of this chapter.

Sec. 3. (a) A person who receives an adverse decision under section 2 of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for review:

(1) in the court of conviction, if the adverse decision was made by the department of correction; or

(2) in a circuit or superior court in a county adjacent to the county in which the court rendered the adverse decision, if the adverse decision was made by a court.

(b) The court hearing an action for review filed under this section shall conduct the review hearing de novo. The hearing shall be conducted in accordance with section 2 of this chapter.

(c) The determination of a court under this section is a final appealable order."

Page 2, line 33, after "evidence" insert "**demonstrating by clear and convincing evidence**".

Page 3, line 10, after "offense." insert "**If a person's license is suspended because the person has been charged with a felony, the person may seek reinstatement of the license in accordance with subsection (k).**".

Page 3, line 12, delete "judicial review in accordance" and insert "**de novo review of the suspension or revocation in accordance with subsection (d).**".

Page 3, delete lines 13 through 14.

Page 3, line 15, delete "suspension or revocation is valid."

Page 3, line 16, delete "judicial" and insert "**de novo**".

Page 3, line 17, after "(d)" insert "**A person who receives an adverse decision under subsection (a) of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for de novo review in the court of conviction. The sentencing court hearing an action for review filed under this section shall conduct the review hearing de novo. If the court finds that the superintendent has demonstrated**

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by clear and convincing evidence that there is documented evidence showing that the person is prohibited under section 3(g)(5) of this chapter from being issued a license or is not a proper person to be licensed under:

- (1) IC 35-47-1-7(1) (conviction for resisting law enforcement);
- (2) IC 35-47-1-7(2) (conviction for a felony);
- (3) IC 35-47-1-7(3) (conviction for a crime of domestic violence);
- (4) IC 35-47-1-7(4) (prohibited by court order);
- (5) IC 35-47-1-7(5) (alcohol or drug abuser);
- (6) IC 35-47-1-7(7) (false statement of material fact on handgun application);
- (7) IC 35-47-1-7(8) (conviction related to unsafe use of a handgun);
- (8) IC 35-47-1-7(9) (conviction related to violation of this article); or
- (9) IC 35-47-1-7(10) (certain juvenile adjudications);

the court shall affirm the superintendent's suspension or revocation of the person's license. If the superintendent fails to meet the burden of proof, the court shall order the superintendent to reinstate the person's license. The determination of a court under this subsection is a final appealable order.

(e)".

Page 3, line 19, delete "a circuit or" and insert "**the sentencing**".

Page 3, line 20, delete "superior".

Page 3, line 20, delete "in the person's county of residence".

Page 3, line 26, delete "(e)" and insert "**(f)**".

Page 3, line 26, delete "(d)" and insert "**(e)**".

Page 3, line 27, delete "a preponderance of the" and insert "**clear and convincing**".

Page 4, line 2, delete "(f)" and insert "**(g)**".

Page 4, line 2, delete "(d)" and insert "**(e)**".

Page 4, line 22, delete "(g)" and insert "**(h)**".

Page 4, line 22, delete "(d)" and insert "**(e)**".

Page 4, line 26, delete "(h)" and insert "**(i)**".

Page 4, line 32, delete "(i)" and insert "**(j)**".

Page 4, between lines 34 and 35, begin a new paragraph and insert:
"(k) This subsection applies only to a person whose license has been suspended because the person has been charged with a felony. If the person is acquitted of:

- (1) all felonies; and
- (2) all misdemeanors that would disqualify the person from

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possessing a license;
 the person may petition the court in which the trial was held to order the superintendent to reinstate the person's license. The court shall schedule a hearing and notify the prosecuting attorney. In a hearing conducted under this subsection, the prosecuting attorney must prove by clear and convincing evidence that the person is not entitled to possess a license. The court shall order the superintendent to reinstate the person's license unless the court finds that the prosecuting attorney has proved by clear and convincing evidence that the person is not entitled to possess a license."

Page 4, line 37, after "(a)" insert **"This section does not apply to a person described in IC 33-23-15.**

(b)".

Page 4, line 37, after "may" insert **"conditionally"**.

Page 4, line 40, delete "gives rise to a reasonable" and insert **"demonstrates by clear and convincing evidence"**.

Page 4, line 41, delete "belief".

Page 5, line 1, delete "reasonable grounds to believe" and insert **"clear and convincing evidence"**.

Page 5, line 3, after "section." insert **"The superintendent may suspend the license of a person charged with a felony in accordance with subsection (s)."**

Page 5, line 5, delete ":" and insert **"written medical evidence."**

Page 5, delete lines 6 through 9.

Page 5, line 10, delete "(c) Upon" and insert **"(d) This subsection does not apply to a person who has been charged with a felony. A person whose license has been suspended under subsection (b) may seek reinstatement of the license by filing a request for reinstatement with a circuit or superior court in the person's county of residence not later than thirty (30) days after the person's license has been suspended. The person must attach a signed waiver of medical privacy concerning all matters that bear on the person's eligibility to possess a license. The court shall forward a copy of the request for reinstatement and waiver of medical privacy to the county prosecuting attorney. If the person has filed a request for reinstatement and waiver of medical privacy with the court, upon"**.

Page 5, line 11, delete "(a)" and insert **"(b)"**.

Page 5, line 23, after "the" insert **"person's"**.

Page 5, line 23, after "county" insert **"of residence"**.

Page 5, line 33, after "(2)." insert **"If a person does not file a**

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request for reinstatement and waiver of medical privacy, the person's license will be suspended indefinitely. However, a person whose license has been indefinitely suspended based on the person's failure to seek reinstatement under this subsection may, not earlier than three hundred sixty-five (365) days after the person's license was suspended, file a petition for reinstatement with the court in accordance with subsection (m).".

Page 5, line 34, delete "(d)" and insert "(e)".

Page 5, line 41, delete "(e)" and insert "(f)".

Page 5, line 41, delete "(d)" and insert "(e)".

Page 6, line 6, delete "(f)" and insert "(g)".

Page 6, line 7, delete "(d)" and insert "(e)".

Page 6, line 14, delete "(g)" and insert "(h)".

Page 6, line 14, delete "(f)" and insert "(g)".

Page 6, line 18, delete "(h)" and insert "(i)".

Page 6, line 24, delete "(i)" and insert "(j)".

Page 6, line 24, delete "(h)" and insert "(i)".

Page 6, line 32, delete "(j)" and insert "(k)".

Page 6, line 33, after "proved" insert **"by clear and convincing evidence"**.

Page 7, line 1, delete "(k)" and insert "(l)".

Page 7, line 1, delete "(j)" and insert "(k)".

Page 7, line 4, delete ":" and insert **"written medical evidence."**

Page 7, delete lines 5 through 7.

Page 7, line 8, delete "(l)" and insert "(m)".

Page 7, line 8, after "after" insert ":

(1)".

Page 7, line 9, delete "(j)" and insert "(k)".

Page 7, line 9, delete "," and insert "; or

(2) the person's license is suspended, if the person does not file a petition for reinstatement under subsection (d);"

Page 7, line 9, beginning with "the person" begin a new line blocked left.

Page 7, line 10, after "license." insert **"The person must attach to the petition a signed waiver of medical privacy concerning all matters that bear on the person's eligibility to possess a license."**

Page 7, line 11, after "petition" insert **"and waiver of medical privacy"**.

Page 7, line 15, delete "(m)" and insert "(n)".

Page 7, line 15, delete "(l)" and insert "(m)".

Page 7, line 16, delete "a preponderance of the" and insert **"clear and convincing"**.

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Page 7, line 21, delete "(n)" and insert "(o)".

Page 7, line 21, delete "(l)" and insert "(m)".

Page 7, line 29, delete "(o)" and insert "(p)".

Page 7, line 29, delete "(l)" and insert "(m)".

Page 7, line 31, delete "(l)" and insert "(m)".

Page 7, line 32, delete "(l)" and insert "(m)".

Page 7, line 33, delete "(p)" and insert "(q)".

Page 7, line 39, delete "(q)" and insert "(r)".

Page 7, between lines 41 and 42, begin a new paragraph and insert:

"(s) This subsection applies only to a person who has been charged with a felony. The superintendent may suspend the license of a person charged with a felony until the criminal case against the person is resolved. If the person is acquitted of:

(1) all felonies; and

(2) all misdemeanors that would disqualify the person from possessing a license;

the person may petition the court in which the trial was held to order the superintendent to reinstate the person's license. The court shall schedule a hearing and notify the prosecuting attorney. In a hearing conducted under this subsection, the prosecuting attorney must prove by clear and convincing evidence that the person is not entitled to possess a license. The court shall order the superintendent to reinstate the person's license unless the court finds that the prosecuting attorney has proved by clear and convincing evidence that the person is not entitled to possess a license."

Renumber all SECTIONS consecutively.

(Reference is to SB 493 as printed February 13, 2009.)

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